

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the matter of the petition of the Nebraska)	NUSF - 77
Telecommunications Association for)	
investigation and review of processes and)	INITIAL COMMENTS
procedures regarding the NUSF.)	
)	
)	

**N.E. COLORADO CELLULAR, INC., D/B/A VIAERO WIRELESS' INITIAL
COMMENTS**

NE Colorado Cellular, Inc., doing business as Viaero Wireless ("Viaero") by and through its undersigned attorneys, hereby files its initial comments in the above-captioned docket in accordance with the procedural schedule set forth in the Commission's Order issued March 10, 2010.

Introduction

Viaero appreciates the Commission's proactive efforts to address the issue of Nebraska Universal Service Fund (NUSF) reform, as well as the collaborative, inclusive process it has chosen as a starting point. Viaero sees this docket as a way for the Commission to begin a process of significant and positive change, and values its opportunity to provide its comments. There are at least two reasons the Commission should consider Viaero's input especially valuable:

1. **Viaero has built more rural telecommunications infrastructure than any other carrier in Nebraska over the past seven years.**
2. **Viaero is in a unique position to provide high-speed broadband internet access to the largest number of Nebraskans, in the most remote areas of the state, in the shortest period of time.**



Viaero has worked cooperatively within the Commission's established framework to construct seventeen (17) telecommunications towers in the past three years using funds allocated under Nebraska Universal Service Fund Dedicated Wireless Program, and has built many times that number with its own funds, all outside of the Nebraska's metropolitan areas. Viaero believes the Commission should look most closely at how to encourage further investment in providing broadband to these rural and remote areas through its universal service policies going forward. In pursuing this goal, the Commission should:

- 1. Ensure that NUSF subsidies (if any) are calculated to encourage, rather than discourage, investment.**
- 2. Wipe the slate clean: Keep legacy USF subsidies from distorting the market for broadband service or discouraging competition, which will benefit consumers and keeping the market healthy.**

The best way to accomplish these goals is not necessarily through any particular size of subsidy, or any subsidy at all. Viaero's interest is not in extracting the maximum measure of ratepayer-financed universal service funds. Our interest is advancing policies that encourage sustainable, efficient public and private investment in rural broadband infrastructure while avoiding anti-competitive market distortions.

The process underway at the federal level to make sweeping reforms to universal service policy cannot be ignored, of course. It will be difficult for the Commission to implement any changes to the NUSF until more is known about what Congress and the FCC will do. The Commission should nevertheless consider the broad policy goals it intends to accomplish through NUSF reform, while closely monitoring developments at the federal level.

I. THE COMMISSION SHOULD DETERMINE HOW TO BEST ADVANCE ITS POLICIES IN LIGHT OF FEDERAL UNIVERSAL SERVICE REFORM

A. The FCC Has Provided General Direction Regarding Sweeping Policy Changes In Its National Broadband Plan

The National Broadband Plan (Federal Communications Commission, Connecting America: The National Broadband Plan (2010)) (“National Broadband Plan” or “NBP”) provided significant insight regarding the FCC’s intentions with respect to re-tasking the federal Universal Service Fund to extend *broadband* to a greater percentage of Americans. Notable among its proposals are dramatic changes to federal universal service policy and other implicit subsidies flowing to rural carriers.

1. Access Charge Reform

The National Broadband Plan proposes to quickly reduce existing *intrastate* access rates to match existing *interstate* rates. *National Broadband Plan* at 148. This reform is clearly aimed at eliminating an implicit subsidy that has persisted despite the statutory directive of the Telecommunications Act of 1996 that all universal service support be explicit. If implemented, this reform will be a positive step toward creating a level competitive playing field in rural markets.

2. Reduction of Existing USF Support

The *National Broadband Plan* also proposes to freeze ICLS support, eliminate IAS support, and phase-out support to competitive ETCs, measures which the FCC estimates will yield \$15.5 Billion over ten years which may be re-tasked to funding and supporting broadband deployment. *National Broadband Plan* at 147.

3. The Connect America Fund and Mobility Fund

The universal service funds freed up by the proposed reductions will, according to the NBP, be split between two funds designed to improve broadband deployment. *National*

Broadband Plan at 148. The Connect America Fund ("CAF") would provide financial assistance to carriers serving areas where no business case can be made for sustainable broadband deployment. *National Broadband Plan* at 145. The Mobility Fund would provide one-time support so that all states achieve a minimum level of third-generation ("3G") wireless technology deployment. *National Broadband Plan* at 146. In essence, the FCC has proposed transforming the existing support regime into a more targeted, rigorous support mechanism aimed at meeting the NBP's goals for broadband infrastructure deployment.

4. Election Not To Fund Competition

In one respect, the FCC's plans may be too targeted and too rigorous. Under the NBP, the CAF would fund only one competitor in a given area. The philosophy behind the change is intuitively appealing: if a market will not support one carrier without a subsidy, why would it make sense to fund more than one? But this philosophy dooms the Commission to repeat the mistakes of universal service funding for plain old telephone service ("POTS"): with only one carrier in the market, consumers are gradually robbed of choices, variety, and innovation. To make matters worse, no amount of regulation and oversight can replace market forces in driving the efficient delivery of high-quality service. Over time, the cost of funding one carrier would likely exceed the cost of subsidizing the offerings of competing providers equally. With two carriers competing, prices and products would be set by the market rather than by regulatory considerations, which would allow the FCC to see precisely how much it is subsidizing service in a given area. If prices became artificially low, the subsidy could be reduced.

B. Considerable Uncertainty Remains Regarding Federal Reforms

The most notable aspect of the NBP is the enormity and the complexity of its implementation. The FCC has planned roughly sixty separate proceedings to do so, and while

many of the key proceedings regarding the federal USF are slated for completion within the next year, this schedule may prove to be overly aggressive.

Further complicating matters is the fact that the FCC's final rules may differ in significant ways from the National Broadband Plan, and that Congress may intervene in ways that cannot be predicted. The likelihood of delay and unforeseen outcomes is so significant that the National Broadband Plan cannot be relied upon as a definitive guide for future federal USF policy.

C. The Commission Should Establish Broad Policy Goals

Viaero believes the Commission can, at best, establish broad policy goals to be pursued only as the dust settles on federal reform efforts. Absent any movement at the federal level, it is impossible to reform the NUSF in ways that will be guaranteed to avoid conflicts with changes at the federal level. The Commission should not, however, be dissuaded from its statutory duty to establish sound universal service policy for Nebraska. The Commission may be wise, however, to limit its action to the establishment of broad principles rather than detailed rules at this time.

II. THE NUSF SHOULD BE REFORMED IN A MANNER THAT REDUCES MARKET DISTORTIONS AND ENSURES COMPETITIVE TELECOMMUNICATIONS CHOICES FOR NEBRASKANS WHEREVER POSSIBLE.

Government intervention, whether through subsidies, service regulations, or a combination of the two, is a valuable tool for encouraging the construction of infrastructure and the provision of universal, high-quality telecommunications services. However, all government intervention in private markets has attendant risks. Those risks should be minimized by (1) limiting intervention to the extent possible; (2) pursuing policies that encourage the development of healthy market forces; (3) recognize, rather than resist, consumer preferences and other

market signals; and (4) remain predictable. Any subsidy necessary to encourage the deployment and offering of affordable broadband infrastructure should be limited, portable, and technology neutral.

A. The Lynchpin of Consumer Benefit Is Competition

The Commission should flatly reject the concept that universal service support and market competition cannot co-exist. No government regulation or subsidy can rival the power of a competitive market to drive prices lower, increase consumer choices, and inspire innovation. In areas that have been traditionally expensive to serve with POTS or broadband service, the question is not whether they will *ever* be served by the marketplace, it is merely *when and at what price*.

It is sound policy for this Commission to accelerate deployment and make service more affordable, but doing so at the expense of competition will ultimately prove counterproductive. The legacy model for telephone service in which a monopoly is regulated in exchange for universal service is unworkable. It is inevitable that the market for broadband services, even in rural areas, will be competitive. Subsidizing only the first entrant, or a particular competitor, may discourage others from entering the market for a time and keep prices artificially high. Eventually, a competitive technology will be cheap enough to overcome the more expensive incumbent. At that point, the entire NUSF investment will be lost, but not before it has harmed consumers by delaying their access to a superior technology and a broader array of products.

In the long run, the Commission will spend less subsidizing two, even three competitive broadband networks than it will trying to subsidize and regulate the rates of a monopoly provider.

B. The Commission Should Make Every Effort to Prevent Legacy Regulation from Distorting The Market For Broadband

Historically, the Commission and the FCC have used a combination of implicit and explicit subsidies to keep POTS affordable in rural Nebraska. Those subsidies still exist, and if their effects are still felt after reform they will lead to negative market outcomes. The Commission should not allow a provider's monopoly position in the POTS marketplace and attendant subsidies (USF, NUSF, and excessive access charges) to cross-subsidize broadband services. Traditionally, it has been the province of regulators to perform elaborate analyses of various products in an effort to prevent this result. The only realistic course going forward is to eliminate these subsidies completely, and provide only specific, explicit support that advances the goals of the NUSF. This is the course of action prescribed by Congress in 1996,¹ and the clear direction staked out by the FCC. *National Broadband Plan* at 148.

C. The Commission Should Apply Rigorous, Predictable Standards to Achieve the Goals of the NUSF

1. Analysis of Network Capabilities

Along with concern for a healthy market, the capabilities of any network funded by the NUSF, in whole or in part, should be of primary concern. Analysis of coverage, speed, and time to market, as well as verifying carrier claims regarding these issues, should be part of any subsidy regime. By providing all funding on a per-line basis, rather than based on embedded costs or up-front investment, the Commission can ensure that it only commits NUSF funds to networks that meet its criteria.

a. "Cream-skimming" Analysis

The goal of any subsidy should be to ensure ubiquitous, or near ubiquitous, provision of services demanded by consumers. Even Nebraska's smaller cities already have some broadband

¹ 47 U.S.C. § 254(e).

capability within their population centers, and projects that simply overlay this existing coverage, and do not address the needs of more remote consumers, should not be funded. The current FCC-prescribed “cream-skimming” analysis² should be applied to broadband deployment. That is not to say that funding should not be available to networks that serve cities and villages; only that the surrounding areas must also be served to avoid competition that focuses only on concentrated populations. In assessing the ability of any carrier to serve more remote customers, the Commission should consider construction delays, line extension/construction charges and any other factors that may discourage consumers from utilizing the proposed service.

b. Network Performance

The Commission should develop the capability to monitor critical network metrics from an actual, rather than theoretical, perspective. It should make apples-to-apples comparisons regarding coverage areas, throughput speeds and network management practices. It should rely upon sound engineering principles and field testing to do so, rather than carrier reporting requirements and generic verifications.

2. Funding Criteria

The Commission should not fund networks that do not meet the criteria established to further the goals of the NUSF. These criteria should not extend to pricing or customer service issues if there are multiple competitors in a given market, but they should require a defined measure of network coverage, performance, and network deployment. These criteria are important for the Commission to monitor because they are largely invisible to individual customers and could impact competition. For instance, a carrier should not be allowed to

² In the Matter of the Federal State Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004).

represent that it will cover 97% of the landmass of a given area and then only cover population centers, while a competitor makes the additional investment required to serve everyone. Allowing this sort of gaming will frustrate the fundamental goals of universal service.

3. Predictability of Support

Predictable NUSF policy, regardless of the level of subsidization, will encourage investment. The inverse is also true: unpredictable and unfair government interference in markets discourages competition, because carriers become concerned that changing rules will impair their network investment by favoring other carriers and technologies. Many broadband providers are especially unaccustomed to assessing the risks of changing regulations (but *are* accustomed to market competition). The Commission should recognize that some carriers have competed in the marketplace for subscribers using private investment dollars, while others have built networks using federal and state universal service funds, and still others (like Viaero) have employed a mixture of the two. A fundamental goal of NUSF reform should be to encourage *private* investment, alleviating the burden on the fund;³ this requires the Commission to make clear that it will not take steps that will strand private investment in the regulatory process.

IV. THE COMMISSION SHOULD STRONGLY CONSIDER THE IMPACT OF REFORMS ON PUBLIC SAFETY APPLICATIONS

A. Input From Public Safety Entities Regarding Their Future Uses Of Broadband Is Vital

Broadband is evolving into a comprehensive voice, video and data platform that will likely supplant many traditional roles played by POTS. As it does so, policymakers and public

³ The concept of leveraging public funds by encouraging private sources of capital has been an essential component of the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP). *c.f.*, *Department of Agriculture, Notice of Funds Availability and Solicitation of Applications*, Federal Register Vol. 75, No. 14, Page 3831 (Pub. January 22, 2010).

safety personnel wrestle with critical public safety concerns – today, locating VoIP callers and wireless location technology are the objects of concern, but as more of the state's emergency callers are using broadband, IP-based devices, more opportunities and challenges await. The Commission should consider how the NUSF will interact with public safety funding, and create synergies where possible.

Broadband devices, especially mobile broadband devices, will enhance public safety, especially in rural areas. The ability to transmit streaming video, for instance, has a broad range of applications and will provide police, fire, even ordinary citizens the ability not only to talk to each other, but to transmit video images as well, all the more important when response times are extended in rural areas. A broadband-enabled ambulance will communicate directly with medical staff while in route with a patient, transmitting vital signs and images making treatment while in transport more efficient and effective.

The Commission should gather information from public safety professionals regarding the likely directions for Next-Generation 9-1-1 technology and consider how NUSF dollars can speed the deployment of these technologies. Public safety entities may be able to purchase Next-Generation 9-1-1 equipment, but without a broadband network in the more remote areas of the state this equipment will have little or no value.

B. The Commission Should Consider How Any Subsidy Benefits Or Harms Networks Vital To Public Safety

Both wireless and wireline networks play an important role in the existing 9-1-1 system. The Commission should consider the role the NUSF may have in either encouraging or discouraging investments in network infrastructure that enhance public safety. All carriers are required to provide access to Enhanced 9-1-1 ("E9-1-1"), but where those services are actually


available depends on the reach of that carrier's network. Nebraskans at home or on the road will lack access to the next generation of public safety technology if they lack access to broadband.

Conclusion

The Commission is necessarily constrained by activity at the federal level, but not paralyzed. Viaero strongly recommends that the Commission consider, at least in broad terms, how to further the goals of universal service as POTS networks give way to broadband, IP-enabled networks. Competition, ubiquitous service, and the encouragement of private investment should, in Viaero's view, guide the Commission's policies moving forward.

Respectfully submitted this 19th day of April, 2010.

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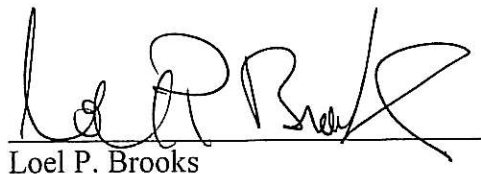
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of April, 2010, an original, six copies and an electronic copy of Viaero Wireless' Initial Comments in Docket No. NUSF-77 were delivered to:

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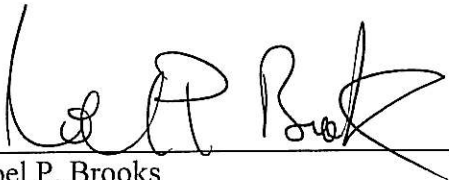
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